IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 928 of 1999
in
SPECIAL CIVIL APPLICATIONNo 3365 of 1999
with
CIVIL APPLICATION NO. 10814 OF 1999

For Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C

Versus

JASHVANTSINH RAMSINH PARMAR

Appearance:

1. LETTERS PATENT APPEAL No. 928 of 1999
MR NAVIN K PAHWA for Appellant No.
MR JIGAR P RAVAL for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE A.L.DAVE

Date of decision: 01/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. Respondent-workman was working as Conductor with the appellant-Gujarat State Road Transport Corporation (for short "Corporation"). On 27.7.1983, when he was on the Muktinagar-Panigate route, his bus was checked by the Checking Inspector. There were some irregularities committed by him in issuing tickets and collecting fare from the passengers of the bus by not issuing tickets to some passengers. Therefore, he was served with a charge sheet and, in the departmental inquiry, he was found guilty. Misconduct was found to be proved, therefore, considering his past record, which was not good, and the seriousness of the proved misconduct of misappropriating public funds, his services were terminated by an order dated 21.12.1984. Therefore, he approached, the Labour Court, Vadodara, by way of Reference (LCV) No.693 of 1986 on 19.8.1986, i.e. after a period of more than two years and four months. Before the Labour Court, the respondent-workman had not challenged the proceedings of the departmental inquiry and, by Purshis-Ex.53, he accepted the inquiry proceedings. In spite of it, the Labour Court held that the misconduct committed by the workman is of a very trivial nature and no past record of the workman was available. Therefore, considering his first misconduct, it can be said that the punishment of dismissal from service was highly disproportionate. Therefore, he is entitled to be reinstated in service and the case being old one, because of the backlog of number of cases, he should be paid 40% back wages. Accordingly, the Labour Court, by its award dated 16.9.1998, partly accepted the Reference and ordered to reinstate the respondent-workman in service with all benefits of service including 40% back wages. The appellant-Corporation was also ordered to pay cost of Rs.1000/- to the respondent-workman. It was also stated that, if the award is not implemented, then the Corporation will have to pay interest at the rate of 18% per annum from 1.11.1998.

2. The appellant-Corporation challenged the impugned award passed by the Labour Court before this Court by way of Special Civil Application No.3365 of 1999 under Articles 226 and 227 of the Constitution. The same was summarily rejected by the learned Single Judge of this Court (Coram: K.R. Vyas, J.) on 4.5.1999. Hence, this Letters Patent Appeal.

3. Ms. Vinita Vinayak for Mrs. Pahwa for the appellant, vehemently, submitted that the Labour Court

ought not to have passed the order of reinstatement of the respondent-workman with 40% back wages when the respondent-workman has not challenged the inquiry proceedings before it. She submitted that the amount misappropriated by the respondent-workman may be less, but after all misappropriation of public funds itself is a very serious misconduct for which no other penalty except the penalty of dismissal from service is called for and when considering the past record (Annexure-B to the main writ petition), if the Disciplinary Authority had decided to terminate his services, then the Labour Court ought not to have exercised its discretion under Section 11(A) of the Industrial Disputes Act. She submitted that the learned Single Judge of this Court has committed the same error in dismissing the writ petition on the ground that when the Labour Court had exercised its discretion under Section 11(A) of the Industrial Disputes Act, then the High Court should not interfere with such discretionary order. She, therefore, submitted that the impugned award passed by the Labour Court and the order passed by the learned Single Judge of this Court on 4.5.1999, dismissing Special Civil Application No.2265 of 1999, are required to be quashed and set aside and this appeal is required to be allowed. However, Ms. Vinayak submitted that the appellants have already reinstated the respondent-workman in service as per the award passed by the Labour Court, therefore, she would not challenge that part of the order passed by the Labour Court of reinstatement of the respondent-workman in service. However, she submitted that, to award 40% back wages on a proved misconduct of misappropriation of public funds would not be proper. She submitted that it was also not proper on the part of the Labour Court not to award any punishment while upholding the decision of the Corporation of holding the respondent-guilty. She submitted that denying 60% back wages is no punishment whatsoever. In fact, in such type of cases, the Labour Court should have passed some punishment like stoppage of increment for a period of five years with future effect, etc. and denied back wages. However, she submitted that, considering the peculiar facts and circumstances of the case, even an order awarding 40% back wages is set aside, then she would be satisfied.

4. This appeal is listed on our running final hearing board dated March 31, 2001. Endorsement shows that this is listed for the 22nd time. In the morning when the matter was called, learned counsel Mr. Jigar Raval for the respondent-workman was not present. Therefore, we waited for him and kept the matter after recess. Unfortunately, he has not turned up even after

recess, therefore, we have no option but to decide the same in absence of Mr. Raval.

5. Having regard to the submissions made by learned counsel, Ms. Vinayak, we are of the considered opinion that the Labour Court Committed grave error in passing the order of reinstatement with 40% back wages. It is true that the charge found to be proved against the respondent workman was that he misappropriated a meagre amount of few rupees, but misappropriation is misappropriation, either it is of small amount or big amount. It is the case of a Bus Conductor and in 1983, when the misconduct was committed by the respondent-workman, a small amount had its own value. That apart, unfortunately, the Labour Court as well as the learned Single Judge of this Court have not at all taken into consideration the past record of the respondent-workman, which is produced at Annexure-B to the petition, which shows that in 1981 and 1982, in all, he committed similar misconducts at least on five different occasions, for which he was fined on those occasions. But, unfortunately, he had not improved himself. In fact, during his brief service of few years, he was punished in all for 15 occasions. Under the circumstances, such a person cannot be kept in service. However, we are not interfering with that order of reinstatement because the award passed by the Labour Court has already been complied with by the appellant-Corporation and since 1999, the respondent is in service.

6. However, we find lot of substance in the submission made by Ms. Vinayak for the appellants regarding 40% back wages awarded. To award any back wages to a person who indulged in misappropriating public funds would amount to giving premium to dishonesty which cannot be permitted. In view of the above discussion, this Letters Patent Appeall is partly allowed and the order dated 4.5.1999 passed by the learned Single Judge of this Court dismissing Special Civil Application No.3365 of 1999 is hereby quashed and set aside. Accordingly, the writ petition, i.e. Special Civil Applicaion No.3365 of 1999, filed by the appellants-petitioners is partly accepted and the award passed by the Labour Court awarding 40% back wages to the respondent-workman, while passing an order of reinstatement, is quashed and set aside. Rest of the award is not interfered with.

7. Civil Application No.10814 1999 has become infructuous in view of the above order passed in the

Letters Patent Appeal. Rule is, therefore, discharged with no order as to costs.

[B. J. SHETHNA, J.]

[A. L. DAVE, J.]

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